

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1134

B

no.

service

Docket No. 76-1134

IN  
THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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THE UNITED STATES OF AMERICA

Appellee-Plaintiff

-vs-

EDWARD CARLTON

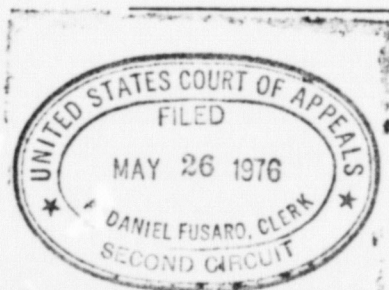
Appellant-Defendant

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CONSOLIDATED  
INDEX FOR THE APPELLANT  
EDWARD CARLTON

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On appeal from the United States District  
Court for the Western District of New York



DIPASQUALE, PACK, HAUSBECK, BALL &  
GREENMAN

Attorneys for Appellant  
HERBERT L. GREENMAN of counsel  
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Buffalo, New York 14203

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PAGINATION AS IN ORIGINAL COPY

John T. Curtis:

6-2-1-5

y force, violence & intimidation, taking from the presence  
f an employee, money belonging to an FDIC-Insured bank,  
n vio. of T.18,USC,Sec.2113(a)(Def.t.1);aiding & abetting  
n taking money from an FDIC-Insured bank by willfull  
orce, violence & intimidation,in vio. of T.18,USC,  
ec.2(a)(Def.t.3)(Ct.1); Willfully taking & carrying away,  
ith intent to steal & purloin, money belonging to an  
DIC-Insured bank,in vio. of T.18,USC,Sec.2113(b)(Def.t.1);  
iding & abetting the taking & carrying away with intent  
o steal & purloin, money belonging to an FDIC-Insured  
ank,in vio. of T.18,USC,Sec.2(a)(Def.t.3)(Ct.2);Willfully,  
lawfully & with felonious intent,taking by force,  
iolence, & intimidation from the presence of an employee,  
oney belonging to an FDIC-Insured bank, & putting in  
ecapard the life of said employee by means & use of a  
angerous weapon,in vio. of T.18,USC,Sec.2113(d)(Ct.3);  
nowingly & unlawfully receiving & possessing money which  
ad been taken & carried away with intent to steal &  
urloin from an FDIC-Insured bank,in vio. of T.18,USC,  
ec.2113(c)(Ct.4);Conspiracy to commit offenses against  
he U.S. by, with use of force, violence & intimidation,  
aking from an employee with intent to steal, money  
elonging to an FDIC-Insured bank,in vio. of T.18,USC,  
ec.371(Ct.5)

5 Cts.

ctions: 2113(a), (b), (c), (d), and 371

2 mailed: MAR 5 1975		3 3 mailed:	
DATE	1975	PROCEEDINGS	
Feb 6	Filed Indictment		
Feb 6	J S 2 made		
Feb 6	Filed cy. 5 of CJA 20--order appointing Edward J. McGuinness as counsel for deft Dorothy Goldsmith, MAXWELL, Mag.		
Feb 5	Filed cy. 5 of CJA 20--order appointing Nelson F. Zakia as counsel for deft. Deborah Ann Smith--MAXWELL, Mag.		
Feb 6	Filed cy. 5 of CJA 20--order appointing Herbert Greenman as counsel for deft James Williams MAXWELL, Mag.		
Feb. 10	Proceedings before the Magistrate - Deft. Deborah Ann Smith, enters a plea of not guilty; Discovery motions are to be filed by February 17, 1975. Govt. is to respond by 2/24/1975; and argument is scheduled for March 4, 1975; bail continued at \$5,000 surety		
Feb. 10	Proceedings before the Magistrate - Deft. James Williams enters a plea of not guilty; Discovery motions are to be filed by Feb. 17, 1975; Govt. is to respond by Feb. 24, 1975; and argument is scheduled for March 4, 1975; Deft's motion to reduce bail denied at this time. Bail continued at \$20,000.		
Feb 11	Filed Magistrate's docket sheet, complaint, affidavit and \$5,000 surety bond for deft. Dorothy Goldsmith--Lulamae Goldsmith, surety		
Feb 11	Filed Magistrate's docket sheet, complaint, affidavit, and temporary		



DATE 1975	PROCEEDINGS
Feb 11	commitment for deft. James Williams
Feb 11	Filed Magistrate's docket sheet, complaint, affidavit, temporary commitment, and \$5,000 surety bond for deft. Deborah Ann Smith--James Smith, surety.
Feb 11	Proceedings before the Magistrate - Re: Dorothy Goldsmith--Deft pled not guilty. Discovery motions are to be filed by 2/18/75. Govt. is to respond by 2/24 and argument is scheduled for 3/4/75. Bail continued at \$5,000 surety.
Feb 18	Filed deft Williams' notice of motion for discovery and inspection, Bill of Particulars, etc., ret. 3/4/75 before the Magistrate
Feb 18	Filed deft Goldsmith's notice of motion for discovery, etc. ret. 3/4/75 before the Magistrate
Feb. 19	Filed Deft. Deborah Ann Smith's notice of motion for Discovery and Inspection, etc., ret. before Magistrate, 3/4/1975
Feb. 19	Filed Deft. Deborah Ann Smith's notice of motion for Bill of Particulars etc., ret. - Magistrate, 3/4/75
Feb.25	Proceedings before the Magistrate - AUSA T. Burns appeared for Govt. - No appearance for defendants. Govt. requested adj. for filing responses to defendants' motions and for argument; adj. to 3/11/75 for argument.
Mar. 7	Filed Govt's response to pre-trial motions filed by the defendant Dorothy Goldsmith
Mar. 7	Filed Govt's response to pre-trial motions filed by the defendant James Williams
Mar. 7	Filed Govt's response to pre-trial motions filed by the Deft. Deborah Ann Smith
Mar. 11	Proceedings before the Magistrate - Adj. to 3/18/75 for argument.
Mar. 18	Proceedings before the Magistrate - Atty. Herbert Greenman with defendant Williams - Argument on discovery motion - denied in part - granted in part; <del>XXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX</del> Argument on motion for inspection of grand jury minutes - denied; argument on motion for Bill of Particulars - denied in part; Atty. Nelson Zakia, Jr. for deft. Deborah Ann Smith - Argument on motion for bill of particulars - denied; Argument on discovery motion for statements of co-conspirators - denied. Atty. Edward McGuinness for the defendant - Oral request for bill of particulars regarding additional claims of aiding and abetting - denied. Deft. to make further motions. Adj. to 4/15/1975 for argument.
Apr. 10	Filed Deft. Deborah Ann Smith's notice of motion for discovery & inspection disclosure, etc. ret. Mag. 4/15/75
Apr. 10	Filed Deft. Deborah Ann Smith's notice of motion for dismissal of the indictment, or an evidentiary hearing, etc.
Apr. 15	Filed Deft. Dorothy Goldsmith's notice of motion for copying and inspection of the records of names and addresses of prospective jurors summoned for jury service in the 11/1974 Session of the Court, and etc. ; Bill of particulars, etc., ret. 4/15/75-Mag.
Apr. 15	Proceedings before the Magistrate - Defts. Dorothy Goldsmith and Deborah Ann Smith; Argument on motion for disclosure of records of impaneling of the Grand Jury - Denied in part, granted in-part; adj. to 4/22/1975 at 10:30 a.m. for argument on motion for bill of particulars as to deft. Goldsmith.
Apr. 22	Proceedings before the Magistrate - Re: Dorothy Goldsmith. Adj. to 4/29 for argument.

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Apr. 25	Filed Govt's response to deft Dorothy Goldsmith's request for a Bill of Particulars.		
Apr. 29	Proceedings before the Magistrate - Atty. Edward McGuinness appeared for defendant Goldsmith. in Oral argument on Bill of Particulars. denied in part, granted/part. Discovery is complete. Case will be sent to Judge Curtin.		
Apr. 30	Filed Govt's supplemental response to the defendant Goldsmith's request for a bill of Particulars		
Apr. 30	Filed Govt's motion to move action for trial		
May 13	Filed defendant Deborah Smith's notice of Motion for an order dismissing the indictment, or an evidentiary hearing, etc., ret. 5/19/75		
May 19	Status report. All defts have made motions. Adj. to 6/30 for Govt response.		
May 21	Filed Deft. Dorothy Goldsmith's notice of motion for an Order dismissing the indictment, etc., and for suppressing evidence, etc., ret. 6/30/75		
June 30	Deft. Goldsmith's motion to dismiss Indictment. Return date for Government's response to Deft's motion. Adj. 8/4/75 for deft. response to Government brief.		
July 3	Filed Govt's memorandum of Law		
July 3	Filed Govt's response to Pre-Trial motions on behalf of the defendant, Deborah Ann Smith and Memorandum of Law (filed above)		
July 3	Filed Govt's response to Pre-trial motions on behalf of the Deft., Dorothy Goldsmith		
July 3	Filed Government's response to Pre-trial motions on behalf of the deft. James Williams (dated 7/31/75)		
Aug. 4	Filed Atty. Nelson Zakia's response /to the Memorandum of Law submitted by the U.S. Atty. in opposition to motion to dismiss the indictment p.r. to Title 28, U.S.C., Sect. 1867, and requesting an evidentiary hearing in order to ascertain the procedures utilized by the Court Clerk and the Commissioner of Jurors in order to ascertain the degree of discretion exercised by these two individuals with regard to the granting of exemptions and excuses to any prospective jurors. (dated 8/1/1975)		
Aug. 4	Filed Atty. Edward J. McGuinness's response/to the briefs filed by the Govt. in response to motions filed regarding objections to the regularity of the selection of jurors from whom respective Grand Juries were selected which returned the indictment, and requesting an evidentiary hearing etc.		
Aug. 4	Govt. has filed answering affidavits. Adj. to 8/14/75 for oral argument		
Aug. 14	Motion by defts. for evidentiary hearing re jury selection procedure. Motion denied. Court schedules hearing on suppression motion for 9/17		
Sept. 15	Filed letter dated 9/8/1975 from James Williams, aka Edward Carlton.		



1-1086

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Sept. 15	to the Court, requesting transfer to a Federal Institution, until trial, etc.		
Sept. 15	Filed copy of letter dated 9/8/1975, from Assistant U.S. Atty, Wagner, to Atty. Edward J. McGuinness, informing Mr. McGuinness, the Witnessess the Govt. intends to call, at the Suppression Hearing scheduled for 9/17/1975		
Sept. 15	Filed Order that the motion of the defendants for an Evidentiary hearing on the issue of compliance with the jury selection procedure is hereby denied and the motion to dismiss the indictment is hereby denied.--CURTIN, J.		
Sept. 15	Filed one subpoena to testify for Robert Gee served on 9-12-75		
Sept. 19	Filed subpoena - Augusta Emmons, served 9/16/1975		
Sept. 17	Suppression hearing. Adj. to 9-19-75		
Sept. 24	Filed subpoena - Det. Clute, served 9/17/75 ; Lt. Zaccarella, served 9/17/75		
Sept. 29	Filed two subpoenas - Francis J. Fortunato, Nelson F. Fose, served 9/25/75		
Sept. 19	Resumption of suppression hearing from 9-17-75 with the same appearance Hearing is adj. until 9-23-75		
Sept. 23	Hearing/continues from 9/19/75 with the same appearances. <sup>for Deft. James Williams</sup>		
Oct. 1	Hearing continued from 9-23-75. Attorneys to meet with court 10-8-75		
Oct. 9	Filed letter dated 10/8/75 from AUSA Edward J. Wagner, to the Court, informing the court, in addition to the testimony of various witnesses as to the events of Feb. 4, 1975, at the trial, what the Govt. intends to offer in evidence, etc.		
Oct. 8	Pre-trial conference held in above case. Court directs a transcript of recent hearing be filed. Thereafter, Court will set up a briefing schedule.		
Oct. 20	Filed CJA 21 Authorization for Expert or other services for Steno cy. 5 filed in clerks office. cy 4 to Adm. office for payment.		
Oct. 30	Filed Court Steno's transcript on proceedings of hearing on motion to suppress, held before Judge Curtin on 9-17-75. and 9-23-75		
Oct. 30	Filed CJA 21 copy 2 voucher for court stenoin the amt. of \$500.00 original to Adm. office for payment.		
Nov. 24	Filed Govt's Brief in-opposition to Defendants' motion to suppress		
Nov. 24	Return date for briefs. Govt. to file brief today. Adj. to 12-8-75 for of Goldsmith brief.		
Dec. 9	Filed defendant's brief supporting their motion to suppress statements and physical evidence.		
Dec. 10	Filed Brief for the Deft. Dorothy Goldsmith in support of her motion to dismiss		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Dec. 8	Return date for briefs. Adj. to 12-15-75		
Dec. 15	Filed Deft. James Williams, notice of motion for Order to Show cause, why the Indictment should not be dismissed, etc. ret. 12/22/75		
Dec. 16	Filed Government's response to defendant James Williams pro se motion for dismissal on alleged failure to receive speedy trial		
Dec. 15	Oral argument on motions. Adj. 12/19/75		
Dec. 19	Oral argument held. Submitted. Trial 1-21-76		
Dec. 22	Order to show cause. Adj. to 12-29-75		
Dec. 29	Motion by deft Williams to suppress. Motion to dismiss for lack of speedy trial. Motion to suppress submitted. Motions to dismiss for lack of speedy trial denied. Motion for a sereveance. This will be taken up at the time of trial.		
<u>1976</u>			
Jan. 14	Filed Deft. Williams notice of motion for Inspection of the G.J. minutes and/or a dismissal of the indictment; motion to suppress statement allegedly obtained from the deft. Brady material; dismissal of the indictment, or an evidentiary hearing, precluding the Govt. from using certain prior convictions, etc. ret. 5/19/75		
Jan. 14	Filed Decision and Order the Officer had sufficient probable cause to arrest defts. Williams and Smith; Evidence seized at the time of arrest is justified; defts' motion to suppress the evidence found in the plastic garbage bag in the basement of the building in which deft. Goldsmith was a tenant is denied, re defts. Williams and Smith; Motion to suppress oral staement by deft. Williams, denied; Motion of deft. Smith to suppress the statements given by her is also denied; Jury selection and trial of this case is set for 1/21/76 at 9:30 a.m.; Further motions shall be promptly filed and will be heard by the Court on 1/22/76--CURTIN, J.		
Jan. 19	Filed eight subpoenas for Chris Henderson, Irene Borgese, Linda Meacham, Charles Bedore, Patricia Paolone, Sally Hachiagin, John Turgeon, Florence Stempiem, all served on 1/14/76 except Hachiagin, Turgeon, and Stempiem served on 1-15-76		
Jan. 19	Deft. Deborah Smith present with counsel, enters a plea of guilty to count five of the indictment. Sentence is deferred until after the trial of the other defts. for deft. Edward Carlton		
Jan. 21	Govt. moves case to trial/before Judge Curtin, and Jury at Buffalo, New York - Trial is hereby adj. until tomorrow - 1/22/76		
Jan. 21	Deft. Dorothy Goldsmith present with counsel, enters a plea of guilty to Ct. 5 of the indictment. Sentence is deferred until the completion of the trial of remaining deft. in the case.		



DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan. 22	Filed Ct. Steno's transcript of the Proceedings of Change of Plea of the Defendants Deborah Ann Smith and Dorothy Goldsmith, taken before Judge Curtin, on 1/19/76, and 1/21/76		
Jan. 22	Filed Cy. 5 of CJA-21 - Authorization for transcript : cv. to the Adm. office		
Jan. 22	Filed Five (5) subpoenas - Douglas Fay, served 1/15/76; Duane T. Truesdal Deborah Ann Smith, Det. Ronald Hiltz, served 1/19/76; Dorothy Goldsmith, served 1/21/76;		
Jan. 22	Jury enters - Deft. is present; Court(Jddge Elfvin) adjourns trial in behalf of Judge Curtin, to 11:30 a.m. on 1/26/76		
Jan. 26	Filed CJA 21 voucher (copy 2) for court steno in the amt. of \$95.00 orig. to Adm. office for payment. Curtin, J.		
Jan. 26	Deft. Williams, counsel and jury present. Case does not go to trial today because defense counsel, Herbert Greenman advises the court he is ill. Trial adj. until 1-27-76.		
Jan. 27	Filed two subpoenas - Lt. John A. Zaccarella, Ofcr. Robert Gee, served 1/27/76		
Jan. 27	Trial continues from 1/22/76 - with the same appearances & jury. Trial adj. until tomorrow --		
Jan. 28	Trial continues from yesterday with the same appearances & jury. On motion of the deft., juror no. 4, Caroline L. Rippelino is removed from the case, and is replaced by alternate juror no. 1, Mary O'Connor. Trial is adj. until tomorrow --		
Jan. 28	Filed two subpoenas - Anthony Berak, Mrs. Bonelle Balch, served 1/23/76		
Jan. 29	Trial continues from yesterday with the same appearances & jury. Deft. Carlton moves to dismiss the indictment. Motion denied. The jury retires to deliberate upon their verdict. Jury reports they cannot reach a verdict. Jury is discharged. Court schedules a retrial for Feb. 24, 1976.		
Jan. 30	Filed subpoena (D.T.) Raymond Duffy, served 1/28/76		
Feb. 9	Filed copy 5 CJA 21 voucher in the amt. of \$465.00. Orig to Adm. office		
" 18	Filed Subpoena - Deborah Ann Smith- served 2/13/76		
" 19	Filed Ct Steno's transcript of Proceedings of the testimony taken at the trial, before Judge Curtin and a Jury on 1/27/76 and 1/28/76		
" 19	Filed Ct Steno's transcript of the proceedings before Judge Curtin, and a Jury resuming on 1/28/76		
Feb 20	Filed Cy 2- of CJA-21--Voucher for Transcript in the amt. of \$486; Orig to the Adm. office for payment		
Feb. 24	Filed subpoena for Sandra Soles, served on 2/20/76. Filed 7 subpoenas for Sally Hachiagin, Florence Stempiem, John Turgeon, Chris Henderson, Irene Borgese, Patricia Paolone, and Linda Meacham, all served on 2-24-76		
Feb 24	Govt moves case ready for trial/ whereupon the Attorneys commence the selection of a jury. Jury selection is adj. until tomorrow		

CT-75-35

D. C. 109

~~CLOSED~~

C100



# In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

JAMES WILLIAMS, a/k/a EDWARD CARLTON  
DEBORAH ANN SMITH  
DOROTHY GOLDSMITH

NOVEMBER 1974 SESSION  
Convened January 21, 1975

No.

CR 75-35

Vis. T. 18, U.S.C.,  
Sect. 2113(a),  
(b), (c) and (d);  
T. 18, U.S.C.,  
Sect. 371

## COUNT I

The Grand Jury Charges:

That on or about the 4th day of February, 1975, in the Western District of New York, the defendant, JAMES WILLIAMS, a/k/a EDWARD CARLTON, willfully, unlawfully and with felonious intent, did by force, violence and intimidation take from the presence of Sally Hachigian, Irene Borgese, Linda Meachum and Florence Stempien, approximately \$3,764.00 in money belonging to and in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 302 Portage Road, Niagara Falls, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(a).

At said time and place, the defendant, DOROTHY GOLDSMITH, aided, abetted, counseled, induced and procured the commission of the offense alleged above; in violation of Title 18, United States Code, Section 2(a).

## COUNT II

The Grand Jury further charges:

That on or about the 4th day of February, 1975, in the Western District of New York, the defendant, JAMES

WILLIAMS, a/k/a EDWARD CARLTON, willfully and unlawfully did take and carry away, with intent to steal and purloin, from the Manufacturers and Traders Trust Company, 302 Portage Road, Niagara Falls, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, certain money aggregating approximately \$3,764.00 belonging to said bank and in its care, custody, control, management and possession; all in violation of Title 18, United States Code, Section 2113(b).

At said time and place, the defendant, DOROTHY GOLDSMITH, aided, abetted, counseled, induced and procured the commission of the offense alleged above; in violation of Title 18, United States Code, Section 2(a).

COUNT III

The Grand Jury further charges:

That on or about the 4th day of February, 1975, in the Western District of New York, the defendant, JAMES WILLIAMS, a/k/a EDWARD CARLTON, willfully, unlawfully and with felonious intent did by force, violence and intimidation take from the presence of Sally Hachigian, Irene Borgese, Linda Meachum and Florence Stempien, approximately \$3,764.00 in money belonging to and in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 302 Portage Road, Niagara Falls, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and JAMES WILLIAMS, a/k/a EDWARD CARLTON in committing the aforesaid offense, did assault said Sally Hachigian, Irene Borgese, Linda Meachum and Florence Stempien and did put in jeopardy the life of said Sally Hachigian, Irene Borgese, Linda Meachum and Florence Stempien by means and use of a dangerous weapon,



that is, a handgun; all in violation of Title 18, United States Code, Section 2113(d).

COUNT IV

The Grand Jury further charges:

On or about the 4th day of February, 1975, in the Western District of New York, DOROTHY GOLDSMITH unlawfully and knowingly did receive and possess approximately \$80.00 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 302 Portage Road, Niagara Falls, New York, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of such taking and carrying away, and DOROTHY GOLDSMITH knew said money to have been so taken and carried away; all in violation of Title 18, United States Code, Section 2113(c).

COUNT V

The Grand Jury further charges:

From on or about the 30th day of January, 1975 and continuing through the 4th day of February, 1975, in the Western District of New York, the defendants, JAMES WILLIAMS, a/k/a EDWARD CARLTON, DEBORAH ANN SMITH, and DOROTHY GOLDSMITH, together with Sandra Lynn Soles, named as a co-conspirator herein but not as a defendant, unlawfully, willfully and knowingly did combine, conspire and agree together to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 2113, by, with use of force, violence and intimidation, taking from the person or presence of another with intent to steal,

certain monies, which monies were then in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 302 Portage Road, Niagara Falls, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

At the times hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about January 30, 1975, JAMES WILLIAMS, a/k/a EDWARD CARLTON, DEBORAH ANN SMITH, and Sandra Lynn Soles drove from Buffalo, New York to Niagara Falls, New York and met with DOROTHY GOLDSMITH.

2. On or about February 4, 1975, JAMES WILLIAMS, a/k/a EDWARD CARLTON, DEBORAH ANN SMITH, Sandra Lynn Soles drove from Buffalo, New York to Niagara Falls, New York and met with DOROTHY GOLDSMITH.

3. On or about February 4, 1975, DOROTHY GOLDSMITH made a telephone call to the Niagara Falls Police Department.

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RICHARD J. ARCARA  
United States Attorney

A TRUE BILL:

John R. Clatrum  
Foreman



CR 75-35-

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

DRUNK

THE UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS, a/k/a EDWARD  
CARLTON

DEBORAH ANN SMITH  
DOROTHY GOLDSMITH

## INDICTMENT

A true bill,

*John P. Chatterton*  
Attorney.

Filed in open court this 6<sup>th</sup> day  
of February, A. D. 1975

Clerk.

Ball, §

GFC 802-482

CHARGE OF THE COURT

THE COURT:

I believe my charge will not be unduly long and I think that probably we might as well go ahead with it now and then after the charge, you can take a break and have some little refreshment, a light luncheon, so that you can go ahead with your deliberation in this case. At the noon break, do not talk about the case. Wait until you are altogether in the jury room before you begin your deliberation.

Deliberation means that you will discuss the facts in the case in a reasonable manner. This case is not to be decided, as I told you before, on the considerations of bias or prejudice, sympathy, any consideration of what the sentence may be or what it ought to be, anything like that. Sentence, of course, is for the Court to determine, if you find the defendant guilty beyond a reasonable doubt. The other considerations such as bias or prejudice have

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



1 absolutely no bearing upon your delibera-  
2 tion.

3 You should listen carefully to the  
4 reasoned views of your fellow jurors.  
5 You should give your own in the mix.  
6 You should try to apply the facts which  
7 you find to the law which I give you,  
8 as well as you can.

9 It is my duty to try to charge you  
10 on the law which applies to this case.  
11 It is your duty to accept the law as I  
12 charge it and apply it to the facts and  
13 from that mix, announce a verdict when  
14 you come back into open court.

15 For your guidance, we will give to  
16 you a copy of the indictment so that you  
17 will have that before you in considering  
18 the various counts here. It is a guide  
19 only because you remember in the very  
20 beginning of this case, I said that an  
21 indictment is absolutely no evidence of  
22 any criminal conduct on the part of Mr.  
23 Carlton. That is a very important  
24 consideration. The indictment is simply  
25 a means of telling him what he is

1 charged with so that he can prepare his  
2 defense and to make sure that he is not  
3 charged again for the same offense.

4 Mr. Carlton, as I have told you  
5 before, is presumed innocent. That  
6 presumption remains with him throughout  
7 the trial. It can only be overcome if  
8 you find, by unanimous vote on any count  
9 or on all counts that he is, - the  
10 Government has, indeed, proven his guilt  
11 beyond a reasonable doubt.

12 Your verdict as to each count, you  
13 must separately consider each count, must  
14 be by unanimous vote which you will  
15 announce in open court. Mr. White, at  
16 that time, will ask your foreman as to  
17 how you find and, of course, then your  
18 verdict will be either guilty or not  
19 guilty announced as to each count. You  
20 may find the defendant not guilty on  
21 all counts. You may find him guilty on  
22 some counts and not guilty on others and  
23 you may find him guilty on all counts,  
24 but whatever your verdict, again I repeat,  
25 it can only be if you are convinced of



1 his guilt beyond a reasonable doubt.

2 During the course of the trial, it  
3 has been my job to try to rule on the  
4 evidence as well as I can and when I  
5 ruled, I said a particular question  
6 could be asked and the answer could be  
7 considered, then you may consider it.  
8 If I said no, that the objection is  
9 sustained, that means that you should not  
10 consider the answer given if it was given.  
11 In your deliberation, you may consider  
12 the exhibits which have been offered into  
13 evidence in this case and which will be  
14 sent to you in the jury room.

15 There is certain evidence which was  
16 ruled out. There are certain exhibits  
17 which will not be delivered to you. You  
18 can only make up your mind in this case  
19 based upon what you do have. You cannot  
20 speculate or guess about other things  
21 which were not brought to your attention  
22 in the courtroom. You are to make up  
23 your mind on the evidence which you have  
24 before you.

25 In any criminal case, there are

1 generally two types of evidence which  
2 the jury may listen to. One is direct  
3 evidence. That is, the testimony of an  
4 eye witness. The other is circumstantial.  
5 That is, the proof of a chain of circum-  
6 stances pointing to one conclusion or  
7 another. As a general rule, the law  
8 makes no difference between direct and  
9 circumstantial evidence but requires that  
10 before convicting a defendant, the jury  
11 be satisfied of the defendant's guilt  
12 beyond a reasonable doubt. It is im-  
13 portant to keep in mind that circumstan-  
14 tial evidence must be used with caution.  
15 It must be reasonable and we all know in  
16 our own lives that when we come to some  
17 conclusion based upon a chain of facts  
18 that if each one of the links in the  
19 chain is not a good substantial one,  
20 then our conclusion is going to be faulty  
21 so that the facts you consider must have  
22 a relation one with the other. If, at  
23 the end of the chain there are two  
24 possible inferences, one pointing to  
25 guilt and the other pointing to innocence



1 in this kind of a case, since it is  
2 the burden of the Government to convict  
3 and a reasonable doubt then you would  
4 accept the inference pointing to inno-  
5 cence.

6 In this case, it is clear that the  
7 defendant did not take the stand. He  
8 is not obliged to. In our courts, the  
9 failure of a defendant to take the stand  
10 may not be considered against him in any  
11 fashion. It may not be even, - you may  
12 not discuss it. You may not consider it  
13 privately. It is to have absolutely no  
14 bearing upon your verdict. He has the  
15 absolute right not to take the stand.  
16 The burden remains upon the Government to  
17 prove his guilt beyond a reasonable doubt  
18 and it goes with that rule, it goes with  
19 it that he is not required to offer any  
20 evidence on his part. The burden is  
21 always upon the Government.

22 We have talked about reasonable  
23 doubt and what is it. A reasonable doubt,  
24 ladies and gentlemen, is a fair doubt  
25 based upon reason and common sense and

1 arising from the state of the evidence.  
2 It is rarely possible to prove anything  
3 to an absolute certainty. That is why,  
4 as you recall during Mr. Greenman's  
5 summation when he was using the word  
6 "moral certainty" that I interrupted and  
7 explained to you that it is really very  
8 difficult to prove almost anything to a  
9 moral certainty and that is not the  
10 standard. The standard is the Government  
11 must prove guilt beyond a reasonable  
12 doubt. That proof beyond a reasonable  
13 doubt is established if the evidence is  
14 such as you would be willing to rely upon  
15 and act in matters most important in your  
16 own affairs. A defendant is not to be  
17 convicted on suspicion, conjecture or  
18 speculation. A reasonable doubt may arise  
19 not only from the evidence produced, but  
20 also from the lack of evidence. Since  
21 the burden is upon the prosecution to  
22 prove the accused guilty beyond a reason-  
23 able doubt of every essential element  
24 of the crime charged, a defendant has  
25 the right to rely upon failure of the



1 prosecution to establish such proof.

2 A defendant may also rely upon the  
3 evidence brought out on cross examination  
4 of the witnesses and the exhibits which  
5 are in the case. A reasonable doubt  
6 is such a doubt as is based upon reason  
7 and as appeals to your power of logic.  
8 It is a doubt arising out of something  
9 tangible in the evidence in the case or  
10 something lacking in the case.

11 If you feel uncertain and not fully  
12 convinced that a defendant is guilty of  
13 the crime charged and you believe you  
14 are acting in a reasonable manner and  
15 you believe a reasonable man or woman  
16 in any matter of like importance would  
17 hesitate to convict because of such a  
18 doubt as you have, that is a reasonable  
19 doubt, to the benefit of which the  
20 defendant is entitled. If you have such  
21 a doubt, then you must acquit.

22 The rule that the Government must  
23 prove every essential element of the  
24 crime beyond a reasonable doubt does not  
25 mean that you have to believe the testimony

1 of every Government witness as being  
2 true beyond a reasonable doubt or that  
3 every piece of evidence they have offered  
4 is true beyond a reasonable doubt. It  
5 means only that the credible evidence  
6 as weighed and found by you under my  
7 instructions and viewed as a whole must  
8 establish every essential element of the  
9 crime and a defendant's guilt beyond a  
10 reasonable doubt, and, as I have ex-  
11 plained to you, your vote must be by  
12 unanimous decision.

13 To determine what the facts are,  
14 we have the exhibits which are in evi-  
15 dence, but then we must rely mainly upon  
16 the testimony of the witnesses and as I  
17 have told you before, you should consider  
18 carefully the cross examination of the  
19 witnesses and how one witness relates to  
20 another and how the witness relates to  
21 the exhibits which have been introduced  
22 into evidence.

23 As I have told you before, you are  
24 the sole judges of the credibility of  
25 the witnesses and it is up to you to



1 determine how much credit you will give  
2 to each witness. You should carefully  
3 scrutinize the testimony given, the  
4 circumstances under which each witness  
5 testified and every matter in evidence  
6 which tends to indicate whether the  
7 witness is worthy of belief. You should  
8 consider the witness' intelligence,  
9 motive, state of mind, demeanor and  
10 manner while on the stand. You should  
11 consider any relationship that the witness  
12 had to either side of the case, the  
13 manner in which the witness might be  
14 affected by the verdict and the extent  
15 to which, if at all, each witness is  
16 either supported or contradicted by  
17 other evidence in the case.

18 The mere fact that the testimony of  
19 a witness is inconsistent or that there  
20 are discrepancies in the testimony does  
21 not necessarily mean that you must  
22 reject the witness' credibility. You  
23 must determine whether the inconsistency  
24 or discrepancy is the result of falsifi-  
25 cation or whether it is the result of

1 innocent miscalculation or inaccurate  
2 observation. If you find that any  
3 witness has lied with respect to any  
4 portion of his or her testimony, you  
5 may disregard that portion which you  
6 find to be unbelievable or you may, if  
7 you desire, disregard the entire testi-  
8 mony of that witness. You will, of  
9 course, as I have said before, consider  
10 a witness' testimony against all the  
11 other testimony in the case to determine  
12 how much reliance you should place upon  
13 it.

14 In this case, there are special  
15 rules which apply to certain witnesses.  
16 You recall both the witnesses Sandra  
17 Soles and Deborah Smith testified that  
18 they were involved in this bank robbery.  
19 As far as their testimony is concerned,  
20 because of that fact, because of their  
21 involvement, they are persons that we  
22 call in the law an accomplice. An  
23 accomplices testimony, you may, of course,  
24 accept it, but when you do accept it, you  
25 must weigh it with caution and accept it



1 only with great care. If you believe it,  
2 then, of course, you may consider it  
3 with all the other testimony in the case,  
4 but it must be very carefully considered.

5 In this case, ladies and gentlemen,  
6 I will now turn to the indictment and  
7 what the Government is required to prove  
8 as to each count in the indictment. The  
9 first count charges, and I am going to  
10 summarize because the indictment will be  
11 delivered to you. It charges a violation  
12 of Section 2113(a), in that the defend-  
13 ant willfully and with felonious intent  
14 and unlawfully did, by force, violence  
15 and intimidation take from the presence  
16 of certain tellers money which was in the  
17 care, custody and control of the bank.  
18 In general terms, we would say Count 1  
19 charges a robbery. The Government must  
20 prove these essential elements beyond a  
21 reasonable doubt before you could bring  
22 in a verdict of guilty on the first  
23 count.

24 First, that Mr. Carlton took the  
25 money from a bank, the deposits of which

1 were insured by the Federal Deposit  
2 Insurance Corporation.

3 Secondly, that the taking was  
4 accomplished through the use of force  
5 or violence or by intimidation and from  
6 the person or presence of one of the  
7 named individuals.

8 Thirdly, the money taken was in the  
9 care, custody, control of the bank.

10 Fourthly, the taking was done with  
11 wrongful intent. That is, knowingly  
12 and willfully and with a specific intent  
13 to disregard or break the law.

14 In Count 1 of the indictment, the  
15 Government has alleged that about  
16 \$3,764 was taken. The exact amount of  
17 money taken, the Government is not  
18 required to prove exactly that amount was  
19 taken. It is necessary that some amount  
20 of money was, in fact, taken and that  
21 it be close to the amount charged.

22 As far as determining whether or  
23 not the deposits are insured by the  
24 Federal Deposit Insurance Corporation,  
25 you have in evidence a certificate and



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I believe it is stipulated so that the bank is, in fact, insured by the Federal Deposit Insurance Corporation.

There are certain words which should be defined a little more specifically. To take by force and violence or by intimidation means willfully to take by putting in fear of bodily harm. Such fear must arise from the willful conduct of the accused rather than from some mere temperamental timidity on the part of the victim. However, the fear of the victim need not be so great as to result in terror, panic or hysteria. Taking by force and violence or by intimidation must be established by proof of one or more acts on the part of the accused which were done or made in such a manner and under such circumstances as would produce in the ordinary person fear of bodily harm.

Actual fear need not be proved. Fear like intent may be inferred from statements made and acts done or omitted by the accused and by the victim as well.

1 and from all of the surrounding circum-  
2 stances shown by the evidence in the  
3 case.

4 When we turn to Count 2, this  
5 charges, in ordinary terms, what we usually  
6 think of as a larceny. On the same day  
7 at the same place, the same bank, it  
8 charges that the defendant willfully  
9 and unlawfully took and carried away  
10 with intent to steal and purloin a  
11 sum of money, which we described before,  
12 from the bank. As far as this count  
13 is concerned, the Government is required  
14 to prove again that the defendant, -  
15 prove beyond a reasonable doubt,  
16 certainly, that the defendant took the  
17 money, that the deposits were insured by  
18 the Federal Deposit Insurance Corporation,  
19 that the money was in the care, custody,  
20 control and management of the bank, and  
21 thirdly, that the taking was done knowing-  
22 ly and willfully and with intent to steal  
23 or purloin and with specific intent on  
24 the part of the defendant to disregard  
25 and break the law and take the money.



1 Again, it is not required that the  
2 Government prove exactly the amount taken  
3 but close to that sum.

4 When we get to Count 3, this parti-  
5 cular count is similar to the first  
6 count charging the robbery, but it also  
7 charges an offense under Subdivision (d)  
8 of 2113 Section in that it charges that  
9 the defendant in committing the aforesaid  
10 offense which is described as the robbery  
11 and larceny, did assault certain named  
12 tellers and did put in jeopardy their  
13 lives by means and use of a dangerous  
14 weapon. That is a hand gun, in violation  
15 of this section. In this particular  
16 count, that is, Count 3 of the indictment,  
17 you may keep in mind that the Government  
18 must prove the facts, the same facts  
19 which they proved in one and two before  
20 you can find the defendant guilty in  
21 Count 3 and in addition, must prove  
22 certain additional acts and prove it  
23 beyond a reasonable doubt.

24 In committing the acts as charged,  
25 you must also find that the defendant

1 here assaulted the named, and the names  
2 are set forth in the indictment, or  
3 put in jeopardy the life of the named  
4 tellers by use of a dangerous weapon or  
5 device. In order to find the defendant  
6 guilty on this count, you must find that  
7 he willfully committed the robbery of  
8 the bank as charged in Count 1 and the  
9 larceny of the bank as charged in Count  
10 2 and then you must determine whether  
11 the evidence in the case established that  
12 the accused in committing these offense,  
13 assaulted the named tellers or put in  
14 jeopardy their life by use of a hand  
15 gun.

16 Certain words again are important  
17 to have more fully described. Assault  
18 is a willful attempt or threat to inflict  
19 injury upon the person of another when  
20 coupled with an apparent present ability  
21 to do so or an intentional display of  
22 force such as would give the victim  
23 reason to fear or expect immediate  
24 bodily harm. An assault may be committed  
25 without actually touching or striking

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1 or doing bodily harm to the person of  
2 another, so if a person has the apparent  
3 present ability to inflict bodily harm  
4 or injury upon another person and will-  
5 fully attempts or even threatens to  
6 inflict such bodily harm as by intention-  
7 ally flourishing or pointing a pistol  
8 or a gun at another person, they may be  
9 found to have assaulted such person.

10 To put in jeopardy the life of a  
11 person by the use of a dangerous weapon  
12 or device means to expose such person to  
13 a risk of death by the use of such  
14 dangerous weapon or device.

15 A dangerous weapon or device in-  
16 cludes anything capable of being readily  
17 operated, manipulated, wielded or other-  
18 wise used by one or more persons to  
19 inflict severe bodily harm or injury  
20 upon another person, so an operable  
21 firearm or other gun objectively capable  
22 of firing a bullet or other ammunition  
23 may be found to be a dangerous weapon  
24 or device.

25 When we turn to Count 5, - Count 4

1 is not before you. It does not involve  
2 Mr. Carlton and you simply ignore it.  
3 I might say at this stage certainly you  
4 understand that the fact that these other  
5 individuals, Deborah Smith, Dorothy  
6 Goldsmith are charged in this indictment  
7 is certainly no evidence whatever of  
8 the guilt of the defendant Edward  
9 Carlton. The fact that they pled guilty  
10 to particular charges has absolutely no  
11 bearing on the guilt of Edward Carlton.  
12 What they did is something else again,  
13 but it certainly cannot be considered  
14 as any evidence standing alone of his  
15 guilt.

16 Count 5 charges a conspiracy.  
17 In this particular count, it charges  
18 that beginning on or about January 30,  
19 1975 and continuing through February 4,  
20 1975, the defendants who are named  
21 therein, including Edward Carlton, to-  
22 gether with Sandra Lynn Soles who you  
23 recall was charged in Niagara County  
24 or named as co-conspirators, or she was  
25 named as a co-conspirator, but not as a



1 defendant, that these individuals  
2 unlawfully, willfully and knowingly  
3 conspired, combined and agreed to commit  
4 offenses against the United States,  
5 namely, to violate Section 2113 by the  
6 use of force and violence and intimidat-  
7 tion, taking from the person of the  
8 named tellers certain monies, which  
9 monies were then and there in the  
10 custody, control, management and posses-  
11 sion of the Manufacturers & Traders  
12 Trust Company.

13 Conspiracy, generally speaking, is  
14 the planning of a criminal act. The  
15 other charges here under 2113(a) and  
16 so forth charge the doing of an act, so  
17 what we are concerned with here is the  
18 plan and you must find before you can  
19 convict Edward Carlton that he knowingly  
20 and willfully became a member of a  
21 conspiracy and the object of the con-  
22 spiracy was to rob the bank which has  
23 been described to you. The Government  
24 must prove beyond a reasonable doubt in  
25 order to convict on this count the

1 following:

2 One, the existence of a conspiracy  
3 or plan beginning on or about January  
4 30, 1975 for the purpose of willfully,  
5 knowingly and intentionally robbing the  
6 described bank.

7 Two, that the defendant Edward  
8 Carlton knowingly joined the conspiracy  
9 with knowledge of its unlawful purpose.

10 Three, that any one of the conspira-  
11 tors need not be Edward Carlton, but  
12 any one of the conspirators committed  
13 at least one overt act in furtherance  
14 of the object of the conspiracy.

15 Generally speaking, what is a  
16 conspiracy. A conspiracy is a combina-  
17 tion or agreement among two or more  
18 people to violate the law and as charged  
19 in the indictment.

20 In this case an agreement to rob  
21 the bank. A conspiracy is a kind of  
22 partnership in criminal purpose. The  
23 gist of the crime is the combination  
24 or agreement itself to violate the law.  
25 It does not mean that the individuals



1 must meet and sign a formal partnership  
2 agreement or that they must sit down  
3 and agree in so many words on what  
4 their unlawful plan is or how they are  
5 going to carry it out, but you must be  
6 satisfied beyond a reasonable doubt that  
7 two or more people intentionally  
8 combined or agreed to a plan which was  
9 worked out between them in some fashion.

10 A conspiracy may be found to exist  
11 even though the conspiracy is never  
12 accomplished. Proof, however, that the  
13 conspiracy was accomplished may be con-  
14 sidered by you as evidence of the existence  
15 of the conspiracy itself.

16 The second element which the  
17 Government is required to prove beyond a  
18 reasonable doubt is that the defendant  
19 Mr. Carlton joined the conspiracy with  
20 knowledge of its unlawful purpose. When  
21 you say "join the conspiracy", you do not  
22 mean that the defendant has to apply for  
23 membership. Before one can be found to  
24 be a conspirator, however, he must know  
25 about the conspiracy and of its unlawful

1 purpose and voluntarily and knowingly  
2 join in it with an intent to combine with  
3 others to violate the law. He must  
4 knowingly promote the scheme or have  
5 some kind of a stake in its outcome.  
6 One may become a member of a conspiracy  
7 without knowing all of the details or  
8 all of the operation of the conspiracy.  
9 One defendant may know only one other  
10 member of the conspiracy, yet, if he  
11 knowingly cooperates to further the  
12 illegal object of the purpose to violate  
13 the law, he becomes a member.

14 If you find that a defendant did  
15 join the conspiracy, then he is bound  
16 by what others said and did to promote  
17 and further the venture, even though he  
18 himself is not present. This is so be-  
19 cause each partner becomes the agent  
20 or partner of every other conspirator.

21 The third element which the  
22 Government is required to prove beyond  
23 a reasonable doubt is that one of the  
24 overt acts set forth in the indictment  
25 was accomplished by one of the members



1 of the conspiracy in order to further  
2 the object of the conspiracy. An overt  
3 act is an act done by a member of the  
4 conspiracy in an effort to accomplish  
5 some purpose of the conspiracy. The  
6 reason the law of conspiracy requires  
7 an overt act, because a person might  
8 agree to commit a crime and then change  
9 his mind or persons might plan a crime  
10 and then do nothing further to bring it  
11 about. Therefore, before a defendant  
12 may be convicted of the crime of  
13 conspiracy, one or more of the conspira-  
14 tors must have taken at least a step or  
15 performed a single act which moved  
16 toward carrying out the unlawful intent  
17 to commit the crime.

18 You will note by looking at the  
19 indictment that some of the overt acts  
20 are completely innocent. Nevertheless,  
21 if those acts were performed by any  
22 member of the conspiracy and they were  
23 done during the existence of the conspir-  
24 acy and in furtherance of its purpose,  
25 then those acts are sufficient to

1 satisfy this third element. The  
2 Government is not required to prove that  
3 all of the overt acts were committed,  
4 but only one.

5 In this case, you will keep in  
6 mind that the law does not require the  
7 prosecution to put in evidence all the  
8 evidence that is at hand or to call all  
9 the witnesses, all persons who may have  
10 been present at any time or place in-  
11 volved in the case or all those who may  
12 appear to have some knowledge of the  
13 matters in issue at this trial. However,  
14 in judging the credibility of the witnesses  
15 who have testified, in considering the  
16 weight and effect of all evidence that  
17 has been produced, you may consider the  
18 prosecution's failure to call other  
19 witnesses or produce other evidence shown  
20 by the evidence in the case to be in  
21 existence and available.

22 As I have said to you before, the  
23 burden of proof remains upon the Govern-  
24 ment to prove the guilt of the defendant  
25 beyond a reasonable doubt.



1 If, ladies and gentlemen, during  
2 your deliberation, you desire, - if you  
3 have a question, have your foreman write  
4 the question out on a slip of paper and  
5 give it to the Marshal and he will  
6 deliver it to me. Do not attempt to  
7 contact anyone else during the course of  
8 your deliberation. If you are called  
9 into court because of some problem, do  
10 not tell me how you stand numerically,  
11 until you have agreed upon a unanimous  
12 verdict.

13 At this time, ladies and gentlemen,  
14 I will ask you to step into the corridor  
15 while I listen to the requests to charge  
16 and any exceptions to the charge as I  
17 have given it to you. If you will step  
18 out with the Marshal, I will have you  
19 back in a few minutes.

20 (Jury escorted from the courtroom.)  
21

22 THE COURT:

Mr. Wagner.

23 MR. WAGNER:

I have nothing else, your Honor.

24 No requests.  
25

1 THE COURT:

Mr. Greenman.

2 MR. GREENMAN:

Your Honor, just to renew my request  
and indicate my exception to the charge  
for the Court's failure to charge those  
matters I have requested. The only  
other thing, and I felt we charged in  
the first case, I have written it here.  
There was a question under Request  
Number 4.

10 THE COURT:

Is this the Government's request?

11 MR. GREENMAN:

Yes, it was, your Honor. That's  
what we talked about originally the  
last time at the last trial. There was  
some mention and I would renew my request  
with regard to Count 3 or either of the  
other counts that if, in fact, the jury  
did not find beyond a reasonable doubt  
that it was Edward Carlton who had  
committed the original acts, then their  
job has stopped there and they would have  
to go no further in looking at the other  
acts. In other words, the assault,  
when you are discussing assault.

23 THE COURT:

I think in telling them that they  
must find that the defendant committed



1 one and two, that explains it to them  
2 the other way around, I believe suffi-  
3 ciently.

4 MR. GREENMAN:

The other thing, your Honor,  
5 previously as before I raised an exception  
6 to the Court's charge on the definition  
7 of assault and I renew that objection  
8 at this time.

9 THE COURT:

I refuse to charge further on that.

10 MR. GREENMAN:

That is all I have, your Honor.

11 THE COURT:

Have the jury come back, please.

12  
13 (Jury returns to the courtroom.)  
14

15 THE COURT:

Will the Marshals step forward,  
16 please.  
17

18 (One male and one female Deputy  
19 United States Marshals sworn as custodians  
20 of the jury.)  
21

22 THE COURT:

Mr. Ambrusco, again we will excuse  
23 you, and Mrs. Johnson, we excuse you with  
24 certainly the thanks of the Court for  
25 your patience and for your cooperation

1 Police Headquarters, Shumway. Yes, this is -- there's  
2 some men fighting, they got guns around Three Corners,  
3 would you please send somebody out? At the Three  
4 Corners? Yes. Okay, ma'am. Police Headquarters,  
5 Shumway. 50? 50. There's nothing going on inside  
6 the Three Corners, you got a complainant? Stand  
7 by. Lieutenant, we got any complainants on that  
8 Three Corners call? Negative. It was a female, 41,  
9 said they were fighting there and that was it.  
10 Okay. 50, call from the desk lieutenant is the  
11 female on the phone say some parties were fighting  
12 and that was supposed to be inside the Three Corners,  
13 right? Didn't specify inside or out, they said  
14 Three Corners. Well, there's nothing here now, so  
15 we'll clear Code 21. Manufacturers & Traders,  
16 Portage and East Falls, they got an alarm. 48 and  
17 41. 48. M & T Portgage and East, an alarm. 48,  
18 10-4, 41, 10-4, KEB 331. 41. Go ahead. That's  
19 affirmative, this is no false alarm over here, they  
20 just got robbed over here. It was a blue car,  
21 just a minute. 10-4. 48, I believe the plate was  
22 673ZAX. 10-4. 673ZAX, last seen heading north in  
23 the alley between 13th and 14th from East Falls



1 Street. 10-4. 47, 42, you read? 47 on the way.  
2 42's inside here yet, John. Police Headquarters,  
3 Shumway. 10-4. 47, give me the plate again.  
4 673Z, Zebra, A, Adam, X, X-ray, we are getting a  
5 28, now, attempting to. 47, 10-4. That car is  
6 occupied by two colored males. All cars, that car  
7 is occupied by two colored males. Any weapons?  
8 41? Go ahead. Are there any weapons used?  
9 I don't know, I haven't been in the bank yet, I got  
10 this from a witness out here on East Falls Street.  
11 10-4. That was 673 Zebra, Adam, X-ray? ZAX, yes.  
12 I believe that's a rented car. See if Lieutenant  
13 Justiana or Captain Mieieier on the air. Go ahead.  
14 Did you read that, Portgage and East a bank was just  
15 held-up? Yes, I'm at 31st and Walnut and my car  
16 quit. 43 to 46. Buffalo Avenue. That's 10-4.  
17 I'm going to take Pine. Any description on the  
18 parties? Two Negro males. 42, I'm clear of the  
19 range, I have Officer Badger with me, you want to give  
20 me the description so far? A blue colored car  
21 plate number 673 Zebra, Adam, X-ray, two Negro  
22 males in the car, that's all we have got so far.  
23 Want to repeat that plate? 673 Z, Zebra, A, Adam,

1 X, X-ray. John, any kind of clothes? John? Yes.  
2 On that bank robbery, 673 Zed, Adam, X-ray, it's a  
3 blue and white car, it's got a white top. The  
4 detectives are on their way there and also a  
5 detective car's going out to Hooker Chemical for an  
6 investigation there. 14 to radio, was there a car  
7 involved in this? 14, there was a white over blue  
8 car, plate number 673 Zebra, Adam, X-ray. All cars,  
9 the 28 came back, it's a rental car, Cheektowaga.  
10 It's a blue '75 Plymouth sedan from a rental company  
11 in Cheektowaga. 14 to radio, you got the State  
12 Police notified on this, on the Thruway? That's  
13 10-4, we have notified the outlying areas. Any kind  
14 of clothes, there's four or five hanging around.  
15 No description yet, this is just information we got  
16 bits and pieces from the officer and witnesses.  
17 44. 44. 43 to 44. Go ahead, Bob. There's been  
18 an armed robbery at the M & T Bank at Pine and  
19 Portage, plate number is 673, that's 673, Zebra,  
20 Adam, X-ray. It's a '65 white over blue Dodge,  
21 perpetrated by two Negro males. I have got Pine  
22 Avenue, 46 has got Buffalo. Why don't you see if you  
23 can catch Military Road in case they are headed for



1 Griffin Manor? 10-4. That's a Plymouth. '75.  
2 All cars additional information on that armed  
3 robbery at M & T Portage and East, there was a  
4 Negro male and Negro female. A handgun was used,  
5 description, Negro male had a ski mask. Black pants  
6 and dark colored Pea coat, possibly black or dark  
7 navy blue. He was tall and slender. 47 go to the  
8 13th Street School, that car used was just left  
9 there. Gas Company car just called, they just pulled  
10 in 13th Street School lot. On the way. Description  
11 of the female involved wore a long plaid coat, and  
12 red slacks. Late teens, early twenties and was light  
13 skinned. Had a blue '75 Plymouth, 673 Zebra, Adam,  
14 X-ray. Last seen going north in the alley between  
15 13th and 14th from East Falls. A handgun was used,  
16 authority car 41, KEB331. John, get a back-up car  
17 for that 13th Street School. John, is anybody  
18 calling a rental agency to see if they can get a name  
19 on the rental of the car? Yes. Car 42. 42.  
20 Back-up 47 at the 13th Street School lot. Give me  
21 a 20. 13th Street between East Falls and Niagara.  
22 John, can you get me any particulars if any cash  
23 was taken or not? I have nothing on it unless you

1 want to call the bank. Coney and Harvey called me  
2 from there. Okay. Car 46. 46. Go to Hooker  
3 main gate, ask for Jimmy James. A preliminary  
4 investigation with regards to the theft of some  
5 platinum, Dick's are unable to go at this time.  
6 That's Hooker main gate? 10-4. Ask for Jimmy  
7 Johnson -- Jimmy James. 10-4. 47 and 42, when you  
8 get to the 13th Street School, do not touch that  
9 vehicle, it will be wanted for prints. 47, that's  
10 10-4. They are out of the car, I'm speaking to  
11 the two men from the Gas Company right now, I'll  
12 get right back to you. 10-4. Car 17, we are  
13 here. We'll handle the investigation here by the  
14 car. 10-4. Can I have an I.D. man come down here  
15 right away, though? 10-4. 77, 10-19 now. 10-4.  
16 47. Go ahead. These two parties are -- from the  
17 Gas Company stated that they saw three individuals  
18 this time, two did match the description, they headed  
19 north on 13th Street towards Niagara Street and they  
20 lost sight of them there. 47, also they are carrying  
21 a brown paper bag. 10-4. 17 to 47, are one of the  
22 cars on 13th Street, go ahead. You want to come  
23 back here to protect this car until the I.D. man



1 gets here? That's 48 will head over there. The  
2 other police car on 13th Street, get the Gas Company  
3 employee's names and addresses and so forth, make  
4 the follow-up. 47, that's 10-4. 47, you gentlemen  
5 state that those parties may have headed west on  
6 Niagara from 13th. West on Niagara, from 13th,  
7 10-4. 44. 44 clear on Military Road, Code 38.  
8 10-4. 10-19. 10-4. 17. Car 47. 47, go  
9 ahead. Advise 17 we are checking with the rental  
10 agency, we are going to see who last rented the car  
11 and they will call us back with the information.  
12 10-4. 47 to 42. Go ahead. They stated that the  
13 third party was a woman about five foot three, heavy  
14 set, wearing a checkered coat. Early twenties.  
15 49. 49. (You might check with the cab company,  
16 see if they make a pick-up in that area.) 47.  
17 47. On that third party involved, heavy set female,  
18 what color coat she have? A yellow and red  
19 checkered type pattern. He stated she's in her  
20 early twenties, heavy set, about five foot three.  
21 10-4. 47, apparently she was waiting over here  
22 by the school, she walked out from between the  
23 building and walked up 13th toward Niagara and then

1 west on Niagara. We got a car coming in for  
2 Truesdale. Yes, 77's coming in to take him out.  
3 Okay. 48. Go ahead. We are standing by this  
4 vehicle. 10-4. Car 42. 42. 915 Walnut Avenue  
5 report of two Negro males in the basement. 10-4.  
6 Get him a back-up, John. 42, Officer Badger with  
7 you? Affirmative. There's two men in that car.  
8 Okay. Better have another car head for that area  
9 just in case. 47. Go ahead. Are you clear? I  
10 will be in about a minute, what we got? Go to 915  
11 Walnut, we got a possible 154. Two Negro males in  
12 the basement, 42 is in route now. 10-4, on the way.  
13 42, that was 915 Walnut? That's a 10-4. John,  
14 what was the time on that call for the bank?  
15 10:55. Okay. Car 43, to any car at the bank  
16 scene. Car 43 to radio. 43. On the second  
17 female, was it possible that she was younger? Late  
18 teens? They said early twenties, may have been  
19 late teens. She's five three, heavy, had a yellow  
20 and red checkered coat. Thank you, John. I mean  
21 the first, the first female. Late teens, early  
22 twenties. Small, thin build? That's unknown,  
23 it was light skinned. 10-4. I'm on Pine Avenue



1 eastbound trying to catch up with a LaSalle Cab.  
2 It's got two female Negro occupants and one male  
3 Negro occupant in the back seat. With a Cauc driving.  
4 Where on Pine Avenue are you now? 66th and Pine,  
5 eastbound. 45. Car 45. Go ahead. Did you read  
6 43, he's going east on Pine at 66th. Behind a  
7 LaSalle Cab. One Negro male and two Negro females  
8 in the cab, a white male driving. 10-4. 43 to  
9 45. Go ahead. We'll be at Pine and Military,  
10 Al, in about a minute. Can you intercept? I'm at  
11 72nd and Buffalo. Disregard. 43, have you got  
12 a sheriff's car available? I'll check. Who called?  
13 21, I'm at Pine and Military. 21 they are trying  
14 to stop a LaSalle Cab going east on Pine, at Military  
15 now, two Negro females, one Negro male in the  
16 cab, there's been an armed robbery at the bank,  
17 Portage and East. 21 to 43. That cab blue and  
18 yellow? Negative, black and white. 10-4. 47 to  
19 17. (inaudible) Car 77 or 303. Car 43 to radio.  
20 43. I've got the cab driver in my car, the three  
21 Negros haven't moved yet. States he picked these  
22 people up at the three hundred block of 14th.  
23 Description fits. You got a back-up car yet?

1 21's at your 20, now. Where are you? We are in  
2 front of the Red Barn. I see a patrol car with a  
3 red light coming, stand by. 10-4. 21 and 45, 43's  
4 got that car stopped in front of the Red Barn.  
5 42, 37. 10-4. 47, 39. 47 to car 17. Go ahead.  
6 Did those two agents come over there and speak to  
7 you yet? Car 48. 10-4. Is the I.D. man there?  
8 10-4. Advise him to go to the bank immediately.  
9 10-4. That's negative 47, we didn't talk to anyone.  
10 Car calling 47, go ahead. That's 17 now, we didn't  
11 speak to no agents. 10-4.

12  
13 \* \* \*  
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1 Caucasian male approach the intersection of Pine Avenue  
2 and 56th Street eastbound. In the back seat of the  
3 LaSalle cab sitting from right to left was a heavy set  
4 Negro female. In the middle was a thinner built and  
5 lighter complected Negro female with a Negro male on  
6 the, - it would be the left side of the vehicle directly  
7 behind the Caucasian male driver.

8 Q. The male was on the left side of the vehicle inside the  
9 vehicle?

10 A. Correct. He was in the back seat behind the driver.

11 Q. Mr. Gee, when you saw this taxi cab, what direction  
12 was it heading relative to the bank that had been robbed,  
13 sir?

14 A. Away from the bank.

15 Q. And was that also away from the vicinity of the 13th  
16 Street School?

17 A. Yes, sir, it was.

18 Q. All right. Will you tell us what you did at that time,  
19 sir, if anything?

20 A. The vehicle passed my location. I advised police radio  
21 of what I had spotted. I asked police radio for another  
22 broadcast on the description of the occupants or of the  
23 parties involved in the robbery. I followed the taxi  
24 cab. I called for another backup car. I called for  
25 assistance because I was going to stop the car.

1 Q. Well, when you called for another description, was any  
2 given to you?

3 A. Yes. There was a rebroadcast of the description.

4 Q. And did that description generally match the persons  
5 you had seen in the back of the car?

6 A. Yes, it did.

7 Q. Could you tell us approximately how fast that cab was  
8 traveling if you could make an estimate?

9 A. Between fifty and fifty-five miles an hour.

10 Q. All right. Mr. Gee, will you tell us what you did then?

11 A. The taxi cab was in front of me about three or four  
12 cars. I got behind the vehicle. I was following the  
13 vehicle. By the time I got behind, it was approximately,  
14 oh, 66th to 70th Street on Pine Avenue eastbound.  
15 I got behind the vehicle, asked again radio for a backup  
16 unit. They didn't have any at the time is why I  
17 continued following the vehicle.

18 Q. All right. Would you tell us what you observed about  
19 the vehicle or its occupants, if anything, at that  
20 time?

21 A. Approximately, well, it would be 72nd and Pine Avenue  
22 still eastbound, between 72nd and 77th Street I  
23 observed the occupants of the cab turn around and look  
24 at me.

25 Q. Would you describe for us what it appeared, - what it



- 1 between you and them at that time?
- 2 A. No. I was directly behind them.
- 3 Q. About how far were you behind them?
- 4 A. Approximately one and a half to two car lengths.
- 5 Q. And about how fast was the car going at that time?
- 6 A. Approximately fifty miles an hour.
- 7 Q. All right. You say you put on your red lights. Will
- 8 you describe what happened after that, sir?
- 9 A. The vehicle pulled directly over to the side at the curb.
- 10 The cab driver, - as I was radioing, I had the cab
- 11 stopped. The cab driver came back to my patrol car and
- 12 asked me what was wrong.
- 13 Q. About how far did the taxi park from your car, sir?
- 14 A. Oh, approximately ten feet.
- 15 Q. And was this just at the side of the road?
- 16 A. Yes, sir.
- 17 Q. All right. Would you describe what happened when the
- 18 taxi driver came back?
- 19 A. The taxi driver came back to my car. I told him to
- 20 have a seat in the passenger side of my vehicle. He
- 21 got into the vehicle. I asked him, I says, "Who do you
- 22 have in the vehicle and where did you pick them up?"
- 23 Q. And would you tell us what he said, if anything, sir?
- 24 A. He said two Negro females, a Negro male, three hundred
- 25 block of 14th Street.

1 Q. Did you actually open the car door yourself, the taxi  
2 door?

3 A. Yes.

4 Q. And what did he do, if anything?

5 A. Nothing. He got out and said he had no identification.

6 Q. Okay. Would you describe this man that got out of the  
7 car as best you recall?

8 A. He was a Negro male, medium build, approximately five  
9 foot eight to five foot ten inches tall.

10 Q. All right. Did you have any conversations with the  
11 other people in the car?

12 A. I myself, no.

13 Q. Were there any other officers there?

14 A. Yes. Officer Burek from the Niagara County Sheriff's  
15 Department approached the vehicle on the right side and  
16 Town of Niagara police officer Douglas Johnson and  
17 City Officer Michael Arber took the two females out  
18 from the right-hand side of the vehicle.

19 Q. And where did these people go after they were taken out  
20 of the car at that immediate time?

21 A. Officer Arber took the Negro male. Officers Johnson  
22 from the Town of Niagara Police Department and I believe  
23 Detective Hilts had approached at that time and took  
24 the two Negro females.

25 Q. Did they stay in the same area of the car?



- 1 A Yes.
- 2 Q How long a period of time was it that you were talkin,
- 3 with the cabdriver?
- 4 A Twenty to thirty seconds.
- 5 Q Okay, and during this conversation, did anyone inside
- 6 that cab, the three occupants of the cab, make any
- 7 attempt as far as you could determine to leave that
- 8 cab?
- 9 A No.
- 10 Q Okay. Now, eventually, when you got out of your
- 11 patrol car, did any other police vehicles come on to
- 12 the scene?
- 13 A Yes.
- 14 Q Okay. Would you describe who else came onto the scene?
- 15 A Officer Arber in Car 44, Niagara Falls Police Car 44;
- 16 Niagara County Sheriff's Deputy Burek and at that point,
- 17 I believe those were the two cars initially.
- 18 Q Okay. You testified last week that you didn't have
- 19 your gun drawn at this time.
- 20 A No.
- 21 Q What about Officer Arber, did he have his gun drawn?
- 22 A No, he didn't.
- 23 Q And what about Deputy Sheriff Burek, did he draw
- 24 his weapon?
- 25 A I am not certain if Officer Burek or Sheriff's Deputy

1 Burek and Johnson from the Town of Niagara Police  
2 Department were on the right-hand side of the vehicle.  
3 I was behind the cab. Actually, I was on the roadway  
4 next to the cab when this took place.

5 Q Was anybody in Car Number 4 besides Officer Arber?

6 A Car 44?

7 Q Yes.

8 A Yes, Captain Symulski.

9 Q Symulski?

10 A Yes.

11 Q So when you left your patrol car, there were four other  
12 police officers on the scene?

13 A As I approached the cab, right, right. I got out of  
14 my car and the cars were coming up.

15 Q Now, as you approached the cab, did you look into the  
16 cab?

17 A Yes.

18 Q And what did you observe when you first looked inside  
19 that cab?

20 A A negro male and two negro females.

21 Q Okay. At that time, did you notice how the negro male  
22 was dressed?

23 A At that time I did, but right now I can't recall.

24 Q Let me ask you, Officer, was he wearing a black or a  
25 blue pea coat?



- 1 A I don't believe so.
- 2 Q Okay. Did you notice the thinly dressed girl sitting
- 3 in the middle?
- 4 A Yes.
- 5 Q And did you notice what she was wearing?
- 6 A I did at the time, but I don't recall.
- 7 Q I will ask you specifically if you can recall at this
- 8 time whether she was wearing red slacks?
- 9 A I am not certain. I don't believe so.
- 10 Q Well, Officer, one of the reasons for your stopping
- 11 this cab is you wanted to investigate a possible
- 12 bank robbery, is that correct?
- 13 A That's correct.
- 14 Q Didn't you think that at that time it was important
- 15 to determining what they were dressed as in relationship
- 16 to the calls you had received over the phone? Wouldn't
- 17 it be somewhat important?
- 18 A Yes.
- 19 Q Okay, but you can't remember now what they were wearing?
- 20 A That's right.
- 21 Q Okay. What did you do as you approached the cab and
- 22 looked inside; what happened next?
- 23 A I don't recall whether I opened the door or the negro
- 24 male opened the door of the cab. I believe I did; asked
- 25 the negro male to step out and asked him for identifica-

1                   tion.

2           Q       And what was his response to you at that that?

3           A       Didn't have any.

4           Q       Did he make any attempt to run from the scene?

5           A       No.

6           Q       Okay. Did he make any attempt to strike you in any way?

7           A       No.

8           Q       Okay. What did you do after he told you he had no  
9                   identification?

10          A       Placed him in custody.

11          Q       You placed him in custody, and at that time I take it  
12                   he was not free to leave that area, is that correct?

13          A       That's correct.

14          Q       Did you frisk him in any way?

15          A       Pat down.

16          Q       And did you find anything of any significance on his  
17                   person?

18          A       No.

19          Q       Did you find anything at all?

20          A       No, I don't believe so.

21          Q       Did you find any identification?

22          A       No.

23          Q       Okay. Now, where were the two negro females at this  
24                   time when you were patting down or frisking the negro  
25                   male?



1 A I believe Officer Burek and Officer Johnson had  
2 taken them out of the car or were in the process of  
3 taking them out of the car.

4 Q Now, when you testified that you frisked him, where  
5 were you standing at that time?

6 A Right next to the back of the cab, the left rear quarter-  
7 panel.

8 Q Toward the rear taillight?

9 A Yes.

10 Q So he was physically completely out of the cab?

11 A Yes.

12 Q And where were the two negro females at the time you  
13 were frisking the negro male?

14 A I can't be certain, they were either still in the  
15 cab or being taken out of the cab.

16 Q Okay. Did there come a time, Officer, when you conducted  
17 a search of that cab?

18 A Yes, we did.

19 Q You say "We did". Let's take you before we do anything  
20 else. Where were you standing when you first conducted  
21 the search of the cab?

22 A I was standing alongside of the vehicle, the rear driver's  
23 side.

24 Q And where was the negro male at that time?

25 A Officer Arber had him, to the best of my knowledge, on  
the curb.

1 Q Can you recall if he was cuffed at that time?

2 A Yes, he was handcuffed.

3 Q He was handcuffed?

4 A I believe he was, yes.

5 Q Okay, and he was somewhere away from that vehicle?

6 A Yes.

7 Q Approximately how many feet was he from the rear door  
8 or from the passenger side of the vehicle?

9 A From where I was, the left rear door?

10 Q Right.

11 A The width of the car.

12 Q Okay, and what about the two negro females at that  
13 time? As you approached the car to search it, where  
14 were they standing?

15 A I believe Officer Johnson had them on the sidewalk.

16 Q Okay. Were they in custody also, Officer?

17 A Yes.

18 Q Okay, and again they were not free to leave either,  
19 were they?

20 A No.

21 Q Can you recall if they were handcuffed?

22 A I don't recall.

23 Q By the way, on that particular day, what method did  
24 you use to handcuff or did Officer Arber use to handcuff  
25 the negro male; was it in front of him or was it behind



1 Q Can you recall if he was cuffed at that time?

2 A Yes, he was handcuffed.

3 Q He was handcuffed?

4 A I believe he was, yes.

5 Q Okay, and he was somewhere away from that vehicle?

6 A Yes.

7 Q Approximately how many feet was he from the rear door  
8 or from the passenger side of the vehicle?

9 A From where I was, the left rear door?

10 Q Right.

11 A The width of the car.

12 Q Okay, and what about the two negro females at that  
13 time? As you approached the car to search it, where  
14 were they standing?

15 A I believe Officer Johnson had them on the sidewalk.

16 Q Okay. Were they in custody also, Officer?

17 A Yes.

18 Q Okay, and again they were not free to leave either,  
19 were they?

20 A No.

21 Q Can you recall if they were handcuffed?

22 A I don't recall.

23 Q By the way, on that particular day, what method did  
24 you use to handcuff or did Officer Arber use to handcuff  
25 the negro male; was it in front of him or was it behind

1 him?

2 A. No, it would be from behind. Departmental rules  
3 state all prisoners will be handcuffed from behind.

4 Q. From behind, so his hands were placed behind his back?

5 A. That's correct.

6 Q. I can't remember, did you say you don't recall if the  
7 negro females were handcuffed at that time?

8 A. I don't recall, I really don't.

9 Q. At any rate, when you started to search that vehicle,  
10 approximately how far were they from the vehicle?

11 A. Five, six feet.

12 Q. Okay, and were they being watched by anyone in particu-  
13 lar?

14 A. I believe Officer Johnson from the Town of Niagara  
15 Police and I also believe at this point Detective  
16 Hilts arrived.

17 Q. Okay. Can you recall if the negro females were frisked  
18 on the scene?

19 A. No, they weren't.

20 Q. In any event, they were away from the cab, is that  
21 correct?

22 A. That's right.

23 Q. Did anyone else besides yourself commence a search of  
24 that taxi cab?

25 A. Yes.



1 Q And who was that?

2 A Niagara County Sheriff Deputy Burek.

3 Q All right, and which side did he enter from?

4 A He entered from the opposite side, the right side.

5 Q How many doors did this cab have, Officer?

6 A Four.

7 Q Okay. The doors were unlocked?

8 A Yes.

9 Q And you just entered, - did he enter at the same time  
10 you did?

11 A Approximately, yes.

12 Q Okay.

13 A Maybe a few seconds after I did.

14 Q At that point, Officer, that you entered the cab, were  
15 you concerned for your physical well being in view of  
16 the fact that three negroes had been placed into custody?

17 A Yes.

18 Q You were concerned for your own physical safety?

19 A Yes.

20 Q And in view of the fact that the negro male had his  
21 hands behind his back - -

22 MR. WAGNER: Your Honor, I will object. The  
23 witness has answered the question.

24 THE COURT: Well, he has.

25 MR. WAGNER: If Mr. Greenman doesn't like it, I

1 think he has to go with it anyway.

2 THE COURT:

3 There's no question about it, that  
4 the male has his hands cuffed behind his  
5 back. Mr. Greenman, next question.  
6 I mean, that is sort of an argumentative  
7 question.

8 BY MR. GREENMAN:

9 Q I realize that. I will withdraw the question. I am  
10 sorry, your Honor. Now, what did you notice, Officer,  
11 when you got into the back of the taxicab?

12 A I noticed a plastic bag on the seat.

13 Q The plastic bag on the seat?

14 A Yes.

15 Q Did you notice what was inside that plastic bag?

16 A After I looked in it, yes, articles of clothing and  
17 I believe a wig.

18 Q Articles of clothing and a wig?

19 A Yes.

20 Q Can you recall what type of clothing was in that bag?

21 A No, I can't recall.

22 Q Well, let me ask you this, Officer, and I don't mean  
23 to be testing you, but can you recall if a pea coat  
24 was found in that bag?

25 A No, there was no pea coat in that bag.



1 Q Okay, and can you recall if red slacks were found in  
2 that bag, to the best of your recollection?

3 A To the best of my recollection, no.

4 Q Okay, so we have everybody in custody and you haven't  
5 found any clothing that met that description that you  
6 had previously received, is that correct?

7 A That's correct.

8 Q Now, at that time, did you go back and question the  
9 negro male or the two negro females any further?

10 A No.

11 Q Okay. What happened after you looked inside the bag;  
12 what did you and Officer Burek do next?

13 A I noticed an attache case on the floor.

14 Q Okay, and when you say "on the floor", would you  
15 particularly describe where you found it?

16 A It was protruding from underneath the front seat.  
17 It would be where the extreme right front passenger  
18 would be sitting.

19 Q Okay. Until that time, Officer, you had not received  
20 any calls over the radio with regard to an attache  
21 case, had you?

22 A That's correct.

23 Q Okay. That's correct that you had not received a  
24 call?

25 A Yes.

1 the bag. He was right there with his head in the door  
2 inside the cab.

3 Q And you both picked that attache case up at the same  
4 time?

5 A I believe Officer Burek picked it up and handed me one  
6 corner. I was over the middle seat. I was further  
7 into the cab than he was.

8 Q Okay. Did you determine whether that attache case was  
9 locked or whether it was open?

10 A When we attempted to open it, it was not locked?

11 Q Okay. How did you open it, Officer?

12 A I undid one corner and Officer Burek undid the other  
13 corner.

14 Q And you opened it and you testified you found some money  
15 inside?

16 A That's correct.

17 Q Just to set the record straight, you couldn't see any  
18 money protruding from the outside of that; you couldn't  
19 see any money until you opened up that attache case?

20 A Right.

21 Q Is that correct?

22 A That's correct.

23 Q No money was sticking out of the sides of the attache  
24 case?

25 A That's correct.



1 Q Did you find anything else in that car, Officer?

2 A I believe there was two ski masks, but I am not  
3 positive. I believe.

4 Q Anything else found inside the car besides what you  
5 have testified to already?

6 A Not to my knowledge.

7 Q Did you, Officer, make an inventory as to what was found  
8 inside that cab?

9 A No, I did not.

10 Q You didn't make an inventory?

11 A No.

12 Q Did anyone, to the best of your knowledge?

13 A To the best of my knowledge, quite possibly Detective  
14 Hilts could have.

15 Q Hilts?

16 A Hilts.

17 Q And I take it once you found the money inside the  
18 attache case, you took these individuals back downtown?

19 A That's correct.

20 MR. GREENMAN: I have no further questions, your  
21 Honor, at this time.

22 THE COURT: Any other questions, Mr. Zakia,  
23 Mr. McGuinness?  
24  
25

1 particularly the gun, she had said that she had heard  
2 mentioned in the apartment something about a boat which  
3 she believed was outside the house somewhere.

4 Q Something that she had heard inside the apartment  
5 previously.

6 A She had heard this inside Dot's apartment and she  
7 suggested this as a possible location for the gun.

8 Q Okay. Now, eventually, you testified you wound up  
9 in the alleyway between 13th and 14th Street, is that  
10 correct? Is that the street?

11 A I'm not sure if it was 13th and 14th or 14th and 15th.

12 Q Okay. I believe you testified between 14th and 15th  
13 Street, is that correct?

14 A I think that's what I testified to.

15 Q Okay, and what did she say as you got to that area?

16 A We drove up the alleyway and she said, "Stop here",  
17 something to the effect that this was the area.

18 Q Okay, and did there come a time when she pointed out  
19 what she felt to be the house?

20 A Yes. She walked up to this one particular sidewalk  
21 and said, "Up here".

22 Q And did you follow her or walk next to her or how were  
23 you traveling with her?

24 A Next to her at some times and followed her at other  
25 times. When she pointed to the garbage can, some of



1 clothes and gave them to Eddie and in turn he placed  
2 them in a garbage bag and she left the room and when  
3 she came back, the garbage bag was gone. She didn't  
4 know where the bag was. As I went into the cellar  
5 looking for Dorothy Goldsmith, I seen a garbage bag  
6 with what looked like a pair of red slacks through it.

7 Q. Mr. Zaccarella, I wonder if you could describe what the  
8 doorway was like that you went into into the basement  
9 and also if you could describe what the basement looked  
10 like at that time.

11 A. There is a door to the basement at the top of the stair-  
12 way. There is approximately, I would be guessing,  
13 seven to ten steps that lead straight down into the  
14 basement and there is what supposedly is a fire door  
15 that was propped open up against the wall, the back wall  
16 of the hallway. This door was propped open with a  
17 wedge under it and you go straight down the steps and  
18 as you get to the bottom of the step on the right side  
19 approximately eighteen inches to twenty-four inch recess  
20 is a small partition area where the garbage bag was.  
21 Straight ahead and to your right was where the furnace  
22 was. All the way straight in is a laundry tub.

23 Q. Mr. Zaccarella, I show you Government's Exhibit 10 for  
24 identification and ask you if you could describe what  
25 that is, sir, if you know.

1 Q. Okay, and when was it that you were first able to get  
2 a look at the entire basement?

3 A. I would say after I was in the basement at least a  
4 minute or so.

5 Q. Well, what about the ceiling as you are walking down,  
6 is there a ceiling, an overhang obstructing your view  
7 of the basement as you are going down the stairs, the  
8 seven stairs?

9 A. There is a wall that would be a partition from the first  
10 floor, yes, sir.

11 Q. Now, when you first noticed what you have described as  
12 these red slacks, what were their conditions; were they  
13 rolled up or were they folded or what?

14 A. I couldn't really tell. All I could see was the red  
15 through the plastic bag.

16 Q. So you didn't see red slacks; you saw something to be  
17 red?

18 A. Yes, sir.

19 Q. And it wasn't necessarily slacks to the best of your  
20 knowledge at that time, was it?

21 A. That's correct.

22  
23 MR. GREENMAN: That's all I have at this time,  
24 your Honor.

25 THE COURT: Mr. Zakia.



1 Q. Was there anything else in the bag that you recall?

2 A. There was garbage in the bag, yes, sir.

3 Q. What do you mean by garbage?

4 A. Food cans, wet paper, typical garbage.

5 Q. After you called for identification, sir, what if any-  
6 thing happened next?

7 A. I yelled up to Mr. Ahart to have Detective Clute bring  
8 Sandra Soles down into the basement and I had her stand  
9 at the bottom of the steps and asked her if she seen  
10 anything she could recognize and she said, "Yes, them  
11 are my pants, that's the coat I was wearing and that's  
12 the gun that Eddie had."

13 Q. What did you do next, sir, if anything?

14 A. I had Detective Truesdale take pictures of the clothing  
15 and the gun and directed him to keep custody of the  
16 same and bring it in to 520 and hold it as evidence  
17 and have our firing range officer fire the weapon.

18 Q. Mr. Zaccarella, when you went into the basement, did  
19 you have a warrant with you at the time?

20 A. No, sir.

21 Q. Do you know if you, sir, or anyone that you know of  
22 obtain permission from any of the tenants at the building  
23 to enter the basement?

24 A. To my knowledge, no, sir.

25 Q. When you went there, was the outside door locked?

1           that is from a safety and a health point of view that  
2           you don't want the basement cluttered up for a long  
3           period of time, is that correct, sir?

4   A.       Yes, but I had also, before that, had complaints of  
5           mice.

6   Q.       Right.

7   A.       And one lady was very afraid of mice.

8   Q.       Right, and I take it you have a pretty good relationship  
9           with most of your tenants then?

10  A.       Very good, yes.

11  Q.       Okay, and based upon the time that you rent the apart-  
12           ment, a particular apartment to them, it is more or  
13           less you can use the basement, just don't take advantage  
14           of me?

15  A.       Keep it clean.

16  Q.       Okay. Now, with regard to the hallways of your  
17           apartment, those are common hallways going up the stairs  
18           from the first and second floors, is that correct, sir?

19  A.       Yes, it is.

20  Q.       Okay, now, other than the hallway, well, let me just  
21           rephrase the question, aside from the hallway, that  
22           basement isn't for the common use of anybody besides  
23           the tenant, the tenants and yourself, is it?

24  A.       That's correct.

25  MR. GREENMAN:                   That's all. I have nothing



1 to go in the basement to do so?

2 A. Yes, sir.

3 Q. Is the basement area in which the laundry facility  
4 is located, does that also contain a furnace, did  
5 you say?

6 A. There is two furnaces there. One is in that section,  
7 yes.

8 Q. Is access to that furnace gained by going through  
9 that particular area?

10 A. Yes, sir.

11 Q. Mr. Enman, who maintains the common hallway area that  
12 leads to the four apartments?

13 A. My one tenant on the first floor takes care of that.

14 Q. Does this tenant do it gratuitously or do you pay her  
15 for it?

16 A. No. I pay her for the hall lights and cleaning that  
17 hall area there every third month.

18 Q. And do you have a specific arrangement like that to  
19 maintain the basement area?

20 A. No.

21 Q. Mr. Enman, where do you store or where do the tenants  
22 keep their garbage in that particular building?

23 A. Well, their daily garbage is kept in their apartments  
24 and then they put it in back by the alley. I have  
25 cans out there in the alley.

1 him and photographed him, after which time I again,  
2 using one of these forms, FD-395 Interrogation Advice  
3 of Rights, advised, - orally advised Mr. Carlton of  
4 his constitutional rights, at which time I also, at  
5 the time I was advising him of these rights, gave him  
6 a copy of the same form for him to read along with  
7 me, which he read and he stated that he completely  
8 understood his rights and I asked him if he was  
9 willing to talk to me about his involvement in the  
10 alleged bank robbery that occurred on the same day  
11 and he said to me, "I ain't got nothing to talk about".

12 Q Mr. Davison, I also again show you what has been marked  
13 as Government Exhibit 3 for identification and would  
14 you describe that again for us, sir?

15 A Yes. This form, as it says, is an FD-395 Interrogation  
16 Advice of Rights form which I filled out at the time  
17 that I advised Mr. Carlton of his rights there in the  
18 interview room. Inasmuch as he refused to make a  
19 statement or refused to sign the waiver or rights  
20 portion of this form I immediately noted his exact  
21 words to me and I put, "Edward Carlton quote, I ain't  
22 got nothing to talk about", end quote, and "refused to  
23 sign this waiver or answer questions". I put my  
24 initials after this statement and then I, under the  
25 witness portion of this, signed my official Bureau name,



1 as well as Mr. Kash did also to witness what had just  
2 transpired, and we put the times that this had occurred  
3 on the form

4 Q And Mr. Kash is a Special Agent with the FBI, sir?

5 A Yes, sir, he is.

6 Q Was he with you throughout this encounter with the  
7 defendant at the office?

8 A Yes.

9 Q Mr. Davison, do you know about what time that was that  
10 you had this conversation with Mr. Carlton?

11 A Yes. The times that I showed him, these rights form  
12 is set forth 1:25 p.m. we started the process of  
13 advising him of his rights, going through the form  
14 with him and it terminated at 1:31 p.m. with his  
15 quoted statement that he did not want to talk about it.

16 Q Mr. Davison, I also show you what has been marked as  
17 Government Exhibit 4 for identification and I will  
18 ask you if you can identify that, sir?

19 A Yes. This is an arrest log which I made up on the  
20 same date showing what had transpired as far as my  
21 contact with Mr. Carlton, setting forth times,  
22 approximate times that these things had occurred.

23 Q Mr. Davison, after that, did you have any further  
24 conversations with Mr. Carlton?

25 A Nothing in regards to the bank robbery, no.

1 A No.

2 Q Well, what did you say to him when you got him down-  
3 town and he was photographed?

4 A Well, we told him as part of our arrest procedure  
5 that we were going to have to photograph him and also  
6 to fingerprint him.

7 Q Okay, and he complied?

8 A Reluctantly as far as the fingerprinting process goes.

9 Q Okay. Did there come a time, Agent, that you started  
10 to question him with regard to the events of the  
11 alleged robbery?

12 A That's correct.

13 Q Approximately what time did that commence?

14 A According to the log that I maintained at 1:25 to  
15 1:31, approximately.

16 Q Okay. Now, what was his response at that time?

17 A Well, I advised him again of his constitutional  
18 rights as set forth on that Interrogation Advice of  
19 Rights form; went through it again, explained it to  
20 him, asked him again, in view of his understanding  
21 of his rights, was he now willing to talk about this  
22 and he made the statement, I believe it was, "I ain't  
23 got nothing to talk about".

24 Q Did you understand that to mean he didn't want to  
25 talk to you?



1 he didn't want to talk with anyone, is that correct?

2 A That's correct. He said, "I ain't got nothing to  
3 talk about" was his words.

4 Q So you took that to mean that he didn't want to say  
5 anything?

6 A That he didn't want to be interviewed.

7 Q That's right, and with regard to his rights, did you  
8 make any attempt to ascertain whether or not he  
9 could afford an attorney at that time?

10 A That's not my job.

11 Q Well, your job is to explain to him that an attorney  
12 would be appointed for him, isn't that correct?

13 A My job is to advise him that if he desires an attorney  
14 to be appointed for him, he can request it.

15 I believe it is the Magistrate's position to make that  
16 determination.

17 Q Okay. Well, again referring back to Government Exhibit  
18 3, the Waiver of Rights, specifically, he refused to  
19 waive any of his rights, is that correct, by not signing  
20 this paper?

21 A That's correct.

22 Q Wouldn't you take that to mean he refused to waive  
23 the right of having an attorney present?

24 MR. WAGNER: I object to what Mr. Davison took  
25 it to mean.

1 THE COURT:

He can answer the question one  
2 way or the other.

3  
4 BY MR. GREENMAN:

5 Q I will repeat it. He refused to waive his rights with  
6 regard to any of the warnings he read to him that  
7 afternoon, is that right?

8 A That's right.

9 Q Did you or did you not take that to mean that he didn't  
10 wish to waive any of his rights at that time?

11 A Yes.

12 Q Okay. Well, why is it that an attorney, - that he  
13 wasn't taken directly to court and an attorney appointed  
14 for him as far as you were concerned?

15 A Because we had not finalized the arrangements to take  
16 him to court at that time. We were waiting for setting  
17 up a time with the United States Magistrate to get the  
18 complaint in affidavit type so that it could be presented  
19 to the Court.

20 Q Okay. Mr. Davison, what I am getting at is at 1:31  
21 he told you he didn't wish to waive his rights, is  
22 that correct?

23 A That's correct.

24 Q To your knowledge, did anyone talk with him after 1:31?  
25 To the best of your knowledge, after 1:31 p.m. on



1 minutes.

2 Q. And would you tell us, Mr. DiLaura, what if anything  
3 happened while you were in the room with Mr. Carlton?

4 A. I was sitting with Carlton and talking in general about  
5 things, just passing the time of day, more or less.

6 Q. What kind of things, if you recall?

7 A. I asked him how he was feeling and he said he had an  
8 upset stomach and I asked him if he was okay and he said  
9 he was. I asked him if he was from the area, things of  
10 this nature, talked about the weather, Buffalo being, -  
11 the weather in Buffalo being pretty bad at times, and I  
12 believe I asked him if he was employed anyplace or  
13 something to that effect, and the conversation turned  
14 to money and he said something to me to the effect that  
15 he didn't have much money or was hurting for money,  
16 something to that effect, and I asked him, "Well, whose  
17 money was in the back of that car, the taxi cab", and  
18 he said, "That was my money", and I said, "Well, how do  
19 you explain if that was your money that some of it, as  
20 I understand, some of it is prerecorded bills from the  
21 bank robbery earlier that day". Oh, I said, I asked him  
22 where he got the money. I asked him where he got the  
23 money, excuse me, and he said, "Gambling", and I said,  
24 "Gambling", I said, "How do you explain some of this  
25 money is prerecorded bait money from the bank robbery",

1 and he said something to the effect, "Well, bank robbing  
2 is a gamble".

3 Q. Did you have any other conversation with him following  
4 that statement?

5 A. I asked him to elaborate on that and he said that he  
6 didn't care to and that was just about it.

7 Q. Did you have any other involvement with Mr. Carlton that  
8 day, sir?

9 A. I don't think so.

10

11 MR. WAGNER: Okay. I have no further questions.

12

13 CROSS EXAMINATION BY MR. GREENMAN:

14 Q. Agent DiLaura, did you review any notes before you  
15 testified here today?

16 A. Yes, I did.

17 Q. Agent DiLaura, I am going to show you Government Exhibit  
18 12 for identification and ask you if that is the notes  
19 you reviewed before your testimony here this morning,  
20 or this afternoon?

21 A. Yes, sir, that is a copy of it.

22 Q. Is that all you reviewed?

23 A. Regarding Mr. Carlton, yes.

24 Q. That which you testified to just now?

25 A. Yes, yes, sir.



1           you made no inquiry as to whether he wanted an attorney  
2           present with him, did you?

3   A.       He had already been asked that and I made no second  
4           inquiry.

5   Q.       Okay, but specifically referring to Government Exhibit  
6           12, you reported this conversation, didn't you?

7   A.       Yes, sir.

8   Q.       And when you asked him the question after he had said  
9           he didn't have much money and you asked, "How do you  
10          explain it", or, "Where did you get the money", those  
11          questions were intended to receive an answer, isn't  
12          that correct?

13  A.       Yes, I would say.

14  Q.       Okay, and hadn't you determined at that time that if  
15          he told you where he got the money, you would record  
16          that and it could be used against him later on?

17  A.       Would you say that again?

18  Q.       Okay. The statements, - the statement about the money  
19          specifically was intended to receive an answer, is that  
20          correct?

21  A.       Yes, sir.

22  Q.       And specifically you knew at that time that if he made  
23          an incriminating statement about wher he got the money  
24          that that could be used against him at a later time?

25  A.       Yes. He and I were both aware of that, yes, sir.

1 PROCEEDINGS: After recess, 11:40 a.m.

2 APPEARANCES: As before noted.

3

4 (Defendant present.)

5 (Jury not present.)

6

7 MR. GREENMAN:

8 Your Honor, again similar to the  
9 first situation, my client indicated to  
10 me this morning that one or two of the  
11 jurors had seen him and I realize that  
12 there was no intent on the marshal's  
13 part to do this, if it so in fact  
14 happened, but I note that this situation  
15 arose at the last trial and I know what  
16 the Court's ruling was and again I put  
17 it on the record, your Honor, renewing  
18 the similar motion I had made before in  
19 view of the fact of the possibility of  
20 prejudice which could result to my client  
21 if, in fact, he was observed by any one  
22 of the jurors in a custodial situation.

23 THE COURT:

24 If you desire, of course, we could  
25 charge the jury in regard to this because  
the presumption of innocence attaches  
whether he is in custody or not. On the



1 other hand, we have talked to the  
2 marshals about this problem which is a  
3 continuing one, because of the location  
4 of the building, the manner of egress  
5 and ingress to the building. Mr.  
6 Hassett who had the duty of bringing  
7 Mr. Carlton over today said, as I under-  
8 stand it, Mr. Hassett, you came in the  
9 building a few minutes after 9:00 this  
10 morning.

11 DEPUTY U.S. MARSHAL HASSETT: Yes, sir.

12 THE COURT:

13 And that you tried to make sure  
14 there were no jurors in the lobby when  
15 you came in. You looked at the lobby and  
16 at that time you did not see any jurors  
17 and you came up to the holding area of  
18 the marshal's service which is on the  
19 seventh floor of the building. Mr.  
20 Carlton stayed here during the lunch  
21 break and then at the end of the after-  
22 noon after we break, usually you wait  
23 about half an hour before you then  
24 retransport him back to the Erie County  
25 Holding Center so that the jurors would  
have left the building. We will again

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ask the marshal in keeping with all of the other duties that you have to endeavor to bring Mr. Carlton or any other prisoner who is on trial over as early as possible so that we will avoid any conflict with any jurors coming in or out of the building.

Mr. Greenman, anything else you want to say about it?

MR. GREENMAN:

Not with regard to that, your Honor. Your Honor, with regard, - I take it you denied the motion. With regard to the matter, - I spoke to Mr. Wagner about it, with regard to the testimony of Officer Truesdale, I believe of the Niagara Falls Police Department, in going over the transcripts, I see a couple of notations where he refers to fingerprint testing, where he referred to negative results and I mention it on the record to the Court the first time and I would like to emphasize it, that for over a year in my bill of particulars, information supplied by the U. S. Attorney's office, Mr. Burns, indicates that no



1 PROCEEDINGS: March 1, 1976, 11:35 a.m.  
2 APPEARANCES: As before noted.  
3  
4 (Defendant present.)  
5 (Jury not present.)  
6  
7 MR. GREENMAN: Your Honor, those deal with the  
8 charge.  
9 THE COURT: Did you give a copy --  
10 MR. WAGNER: I just got a copy now, your Honor.  
11 THE COURT: You may argue to the jury but I  
12 refuse to charge number 1.  
13 MR. GREENMAN: Your Honor, just so I can get this  
14 matter on the record and clarified, the  
15 last time we discussed this, - I am  
16 renewing this, your Honor, for the  
17 record, that request. It is my under-  
18 standing and the Court did rule last  
19 time if I were to comment to the jury  
20 upon the Government's failure to call  
21 a witness, that the Government would  
22 permit, - that the Court would permit  
23 the Government to comment on my failure  
24 also. In other words, that the witness  
25 was equally available, just so we get

1 that straight on the record, and that  
2 was the reason why obviously I did not  
3 comment last time on my summation.

4 THE COURT:

5 The Government has to be careful  
6 on how they express it. This lady is  
7 available to everyone. She is not under  
8 the exclusive control of either side, but  
9 the Government has the burden of proof  
10 beyond a reasonable doubt and the  
11 defense does not have to produce any  
12 witnesses at all so that is the way it  
13 is left, so I suppose before we can  
14 make any ruling upon what the Government  
15 can say in response, we have to listen  
16 to what you say.

17 MR. GREENMAN:

18 I take my chances from there, I  
19 suppose, and that is the trouble. Okay.  
20 Judge, the only reason why, - the basic  
21 reason why, this time I am familiar with  
22 a number of federal cases dealing with  
23 this subject. The point being, your  
24 Honor, is that I don't believe that the  
25 cases as they discuss this matter go to  
the fullest extent as far as the facts  
are applicable in this case with regard



1 to the type of witness Dorothy Goldsmith  
2 might be and we have before the Court,  
3 your Honor, the statement she made to  
4 you at the time she made her plea, the  
5 statement being she felt she was had,  
6 she felt she was taken and this guy,  
7 you know, similar to this, my client was  
8 no good, things like that, and the  
9 point is, your Honor, I feel this in  
10 some way makes her, maybe not in the  
11 purest sense, a hostile witness, but  
12 certainly a witness where it would be  
13 very difficult, if not impossible, for me  
14 to call on behalf of my client.

15 THE COURT:

16 On the other hand, we both know  
17 what she said at the time of the plea  
18 taking and it is questionable whether  
19 or not she could add much to what has  
20 already put into the evidence by the  
21 other witnesses. She was not at the  
22 bank. She did not travel by car to the  
23 bank. She was not in the taxicab or  
24 with the defendants when they were in the  
25 cab after this occurrence and she  
claimed that although she was knowledge-

1 into evidence at this time.

2 THE COURT:

I will overrule the objection and  
3 mark the money envelops in evidence.

4  
5 (Government Exhibits 60, 60A, 61,  
6 received in evidence.)

7  
8 MR. WAGNER:

I believe that is it, your Honor,  
9 for Exhibits.

10 THE COURT:

All right. Mr. Greenman, do you  
11 have a motion?

12 MR. GREENMAN:

Yes, your Honor. Your Honor, I  
13 wonder if we are going to sum up and  
14 charge on Monday, I wonder, your Honor,  
15 if I could just have the weekend. The  
16 motion will be very brief and it will  
17 be a general motion to dismiss.

18 THE COURT:

Do you think you will have some  
19 evidence?

20 MR. GREENMAN:

Well, your Honor, again I am going  
21 to renew the motion which I had made  
22 previously which the Court had denied  
23 with regard to my client's former record.  
24 Again, for the record, your Honor, I had  
25 brought a motion, your Honor denied, your



1 Honor denied the motion the last time  
2 with regard to a previous conviction for  
3 bank robbery which occurred a few years  
4 ago on the basis of it being just so  
5 overwhelmingly prejudicial to the jury  
6 that it might preclude him from being able  
7 to testify. I would renew that motion  
8 at this time for the record, your Honor,  
9 so that we can preserve the question in  
10 this case.

11 THE COURT:

We have the record of the complete  
motion the last time and the argument.  
Do you have any additional authority?

14 MR. GREENMAN:

No, your Honor. What I submitted  
to the Court the last time, I am relying  
on this time.

17 THE COURT:

This is a robbery which occurred in  
when, 1970, 1971?

19 MR. GREENMAN:

Yes, I believe it was.

20 MR. WAGNER:

Yes, 1970.

21 THE COURT:

1970. The conviction was shortly  
after that?

23 MR. GREENMAN:

That's correct, your Honor.

24 THE COURT:

Was that by a plea or was that by  
a trial?

1 MR. WAGNER:

That was a plea of guilty, your  
Honor, to a violation of 2113(b), Title  
18.

2  
3  
4 THE COURT:

Mr. Greenman.

5 MR. GREENMAN:

Your Honor, there were two motions,  
just so we have the record clear on this.  
There were two separate incidents. One  
was a period of time of greater than ten  
years which the Court on the previous  
case informed the Government it would  
keep from questioning on cross examination.

10  
11  
12 THE COURT:

The ruling would be the same on that  
one.

13  
14 MR. WAGNER:

That's right. We didn't offer it,  
your Honor.

15  
16 MR. GREENMAN:

That's right.

17 MR. WAGNER:

Won't again.

18 MR. GREENMAN:

That was on the previous one and  
this one, on the second one, just to  
clarify the record, I am just renewing  
my motion on the second one.

20  
21  
22 THE COURT:

As I understand it, no authority  
other than what was urged to the Court  
the last time.

23  
24  
25 MR. GREENMAN:

That's correct, and we submitted a



1 number of cases to the Court the first  
2 time.

3 THE COURT: Do you have anything further to say  
4 on that, Mr. Wagner?

5 MR. WAGNER: Your Honor, I rely on what I said  
6 last time also.

7 THE COURT: My ruling will be the same. If  
8 Mr. Carlton takes the witness stand it  
9 appears to me that under the circumstances  
10 to test credibility it is appropriate  
11 for the United States to ask him about  
12 the conviction, prior conviction for  
13 bank robbery which occurred sometime in  
14 1971. If either side has any, or if you,  
15 Mr. Greenman, have any further authority  
16 to call to my attention, why this question  
17 should not be asked, let me know on Monday.

18 MR. GREENMAN: Fine. I will do that, your Honor.

19 THE COURT: Other than Mr. Carlton, do you think  
20 you will have any other testimony?

21 MR. GREENMAN: No, your Honor. I discussed this  
22 with Mr. Wagner previously and there was  
23 one stipulation entered into which he  
24 would be willing to enter into, as I  
25 understand, on Monday when we resume.

58

1 MR. WAGNER:

That's right, your Honor, and I  
believe that refers to - -

2  
3 MR. GREENMAN:

The \$13.10 found in his pocket.

4 THE COURT:

All right.

5 MR. GREENMAN:

Other than that, your Honor, I  
would just want to make a very brief  
motion before the Court and I would, -  
I would after the stipulation, rest.

6  
7  
8  
9 THE COURT:

Very well. We will then be ready  
for summations. My charge will be similar  
to the charge the last time. Mr. Wagner  
has sent me a supplemental request to  
charge, I believe, on circumstantial  
evidence.

10  
11  
12  
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14  
15 MR. WAGNER:

That's correct, and I believe, your  
Honor, it is one which you may be  
anticipating to give anyway so I would  
ask that it be given.

16  
17  
18  
19 THE COURT:

It does not seem to be unusual but  
if you have any requests to charge, Mr.  
Greenman, in a special manner, let me  
know on Monday morning.

20  
21  
22  
23 MR. GREENMAN:

I do have some, your Honor. I don't  
know if I have them with me. They might  
be in the office but I did have some

24  
25